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of a person to carry a quart of whisky in his baggage and his right to carry it in his pocket.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

**2. Criminal Law (§ 761 (18)\*)—Instructions—Assumption—Unlawful Transportation of Liquor.**—Where defendant was found in a town hall, where he did not live, with whisky in his pocket, the court did not err in an instruction in assuming that the commonwealth had proved that defendant was transporting the whisky.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 730.]

**3. Intoxicating Liquors (§ 224\*)—Burden of Proof.**—In a prosecution under the Mapp prohibition law, defendant had the burden of proving any matter in defense upon which he wished to rely.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 33.]

**4. Criminal Law (§ 1172 (8)\*)—Harmless Error—Instructions.**—Where one was convicted under the Mapp law of unlawfully transporting whisky, he was not prejudiced by an improper instruction concerning the unlawful keeping or storing of whisky.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

Appeal from Circuit Court, Wise County.

Lee Carter was convicted of unlawfully transporting more than one quart of ardent spirits, and he appeals. Affirmed.

*A. N. Kilgore*, for the plaintiff in error.

*Attorney-General Jno. R. Saunders* and *Assistant Attorney-General J. D. Hank, Jr.*, for the Commonwealth.

#### JEWELL RIDGE COAL CORPORATION *v.* KEEN.

Sept. 19, 1918.

[96 S. E. 767.]

**1. Master and Servant (§ 261 (1)\*)—Injuries to Servant—Contributory Negligence.**—Question whether plaintiff, coal miner, was guilty of any such negligence, whether common-law or statutory, as would preclude his recovery against his employer, was matter of defense, not of averment; declaration alleging employer's negligence and plaintiff's freedom from fault.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 721.]

**2. Master and Servant (§ 235 (10)\*)—Duty of Coal Miner—Statute.**—Mine Law (Acts 1912, c. 178) § 13, making it duty of coal miner to prop and secure his place, did not apply where threatened danger was not of character calling for use of props, as determined by mine foreman on report of unsafe condition by miner.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 705.]

**3. Master and Servant (§ 185 (12)\*)—Fellow Servants—Coal Mining—Statute.**—By direct provisions of Mine Law (Acts 1912, c. 178) §

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

29, in discharging duties required by act, mine foreman, boss, or fire boss, and their assistants, as slate men, shall be considered as acting for the mine owner or operator as a vice principal.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 14.]

**4. Master and Servant (§ 231 (2)\*)—Injuries to Servant—Contributory Negligence.**—Coal miner was not negligent in assuming to work in unsafe place on mine foreman's promise that he would have it made safe, and assurance of slate men that defects had been remedied; foreman and slate men being vice principals.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 702.]

Error to Circuit Court, Tazewell County.

Action by W. H. Keen against the Jewell Ridge Coal Corporation. To review judgment for plaintiff, defendant brings error. Affirmed.

*Graham & Hawthorne*, for the plaintiff in error.

*Greever, Gillespie & Devine*, for the defendant in error.

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GOLLEHON *v.* GOLLEHON et al.

Sept. 19, 1918.

[96 S. E. 769.]

**1. Vendor and Purchaser (§ 226 (2)\*)—Rights of Purchaser—Charge on Land.**—Where wife, suing for divorce, impleaded husband's brother, to whom husband had transferred an interest in land, alleged to have been done with fraudulent purpose of defeating a charge on the land for alimony, suit money, and maintenance, the alimony decreed constituted a charge on the land, where the brother had not participated in fraud, to the extent of the purchase money brother owed when impleaded, at which time he was given notice of the charge on the land.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 596.]

**2. Divorce (§ 37 (5)\*)—Grounds—Desertion.**—Wife, who has been willfully deserted or abandoned for three years, is entitled to a divorce.

Appeal from Circuit Court, Smyth County.

Action by Amanda Gollehon against Ralph L. Gollehon and W. C. Gollehon, in which the latter filed a cross-bill. From that part of the decree which exonerated certain land from liability for \$650 permanent alimony and \$50 additional attorney's fees decreed in behalf of plaintiff, plaintiff appeals. Reversed in part.

*S. B. Campbell and J. D. Perkins*, for the appellant.

*Jno. P. Buchanan*, for the appellees.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.